

STATE OF MICHIGAN  
COURT OF APPEALS

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SBL ORANGE PARK INVESTMENTS, LTD.,

Plaintiff-Appellant,

v

RMED, INC. and MARK MITCHELL,

Defendants-Appellees.

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UNPUBLISHED

August 2, 2005

No. 253233

Oakland Circuit Court

LC No. 2003-047784-CK

Before: Borrello, P.J., and Bandstra and Kelly, JJ.

MEMORANDUM.

Plaintiff appeals as of right from orders granting defendants' motion to dismiss this case under the doctrine of *forum non conveniens* and denying reconsideration. We affirm. This appeal is being decided without oral argument pursuant to MCR 7.214(E).

In 1999, the parties entered into a five-year lease of commercial property in Florida. Defendants ceased paying rent in May 2002, and plaintiff filed suit seeking damages. Instead of answering, defendants sought dismissal, asserting that related litigation was taking place in Florida. The trial court granted the motion without prejudice, expressly inviting plaintiff to refile in Michigan should Florida not be able to exercise jurisdiction over any party.

Plaintiff argues that the trial court erred in concluding that Florida was the better forum for this case. We disagree. We review a trial court's decision on a motion to decline to exercise its jurisdiction under the doctrine of *forum non conveniens* for an abuse of discretion. *Cray v General Motors Corp*, 389 Mich 382, 395-397; 207 NW2d 393 (1973).

This case stems from a lease of real property in Florida, and plaintiff itself is a Florida corporation. Although defendants both must apparently be considered Michigan-based, they have announced a preference for Florida venue. That Florida can exercise jurisdiction over them seems little in doubt, because this case arises from a Florida lease to which they are parties. See *Virginia Farm Bureau Mut Ins Co v Dunford*, 877 So 2d 22, 23-24 (Fla 4<sup>th</sup> Dist Ct App, 2004), citing Fla Stat 48.193(1)(g) (asserting personal jurisdiction over persons breaching contracts to be performed in Florida). Moreover, as noted above, the trial court recognized the possibility of a jurisdictional problem, and dismissed the case without prejudice so that it may be refiled should one arise. Other litigation that might be related to the instant case is proceeding in Florida. Against these considerations favoring Florida stands only plaintiff's initial preference favoring Michigan. See *Cray*, *supra* at 396.

For these reasons, we conclude that the trial court did not abuse its discretion in declining to exercise jurisdiction in deference to Florida venue.<sup>1</sup>

We affirm.

/s/ Stephen L. Borrello  
/s/ Richard A. Bandstra  
/s/ Kirsten Frank Kelly

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<sup>1</sup> We further note that, at the motion hearing, defense counsel stated that plaintiff “sued RMed, Inc. previously in the state of Florida under the same lease. It was a money dispute and it was resolved at that time but they have already taken advantage of the forum in Florida to sue us and it’s been resolved.” Plaintiff’s attorney did not dispute this account at the motion hearing, and plaintiff does not mention it in his brief on appeal. This unanswered assertion further undercuts plaintiff’s argument that RMed can be sued only in Michigan.